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SUBJECT: INTELLECTUAL PROPERTY ACTION PLAN: ENGAGING GOC ON IPR UNDER SPP BEFORE OCR

REF: A. OTTAWA 1305 (CANADA'S RESPONSE TO 2005 SPECIAL

301 REPORT)

[¶](#)B. SECSTATE 94876 (REQUEST FOR NOMINEES: USPTO INTELLECTUAL PROPERTY ENFORCEMENT PROGRAMS)

[¶](#)C. OTTAWA 1571 (IPR FILESHARING APPEAL: RIGHTS-HOLDERS LOST A BATTLE BUT WINNING THE WAR)

INTELLECTUAL PROPERTY ACTION PLAN: ENGAGING GOC ON IPR UNDER SPP BEFORE OCR

[¶](#)1. (SBU) Summary and Action Request: Following the Special 301 decision requiring an out of cycle review for Canada (OCR), we urge Washington agencies to engage directly with Canadian officials to clarify the issues and assess how much progress can be expected during the review period. Following are our suggestions for elements of an action plan for the review period. Action Request: Post requests comments on our proposals, and as appropriate, requests that Washington agencies propose dates and agenda for working group meetings or other forms of contact with Canadian officials. End Summary.

[¶](#)2. (SBU) The recent Appeals Court decision negating last year's controversial court decision that peer-to-peer filesharing is legal in Canada has reassured many rights-holders, but the appeals judge stopped short of actually declaring filesharing illegal. This gray area in Canadian IPR emphasizes the need for the GOC to ratify the World Intellectual Property Organization (WIPO) treaties. Copyright amendment legislation that will allow Canada to ratify the WIPO treaties is expected to be introduced this week. Earlier GOC descriptions of their intended copyright act amendments made it clear that the draft legislation will likely not meet rights-holders' expectations in a few key areas, including Internet Service Provider 'notice and takedown'. USG will need to engage the legislative branch as well as relevant departments. The tabling of the draft legislation offers an opportunity for us to re-engage on IPR: the Canadians have been expecting a U.S. proposal to meet since the release of the Special 301 report and have reiterated their readiness to cooperate.

[¶](#)3. (SBU) Bilateral Working Group: We suggest that an effective U.S.-Canadian working group would be the best way of institutionalizing IPR cooperation and encouraging stricter IPR enforcement in Canada: participants could include U.S. Patent and Trademark Office (USPTO), U.S. Copyright Office, DHS, and Embassy Ottawa on the U.S. side and International Trade Canada, Royal Canadian Mounted Police, Canadian Heritage, Industry Canada, and Canada Border Services Agency on the Canadian side. A notional agenda for a first meeting (or video conference) could include an exchange of contact information, a Canadian briefing on IPR law and enforcement procedures, and a U.S. list of specific questions and concerns about procedures (drawn in part from the past Special 301 process). It could conduct its business independently or under SPP or STOP; we believe SPP provides an excellent potential forum for cooperation on IPR, as IPR already figures in both the security and prosperity agendas, e.g. the signature theme of a "Fake Free North America." As noted previously (ref Ottawa 1305), a working group linked explicitly to Special 301 is likely to be less popular with Canadian officials, who regularly note their objection to the entire Special 301 concept. In any case, we suggest that an initial meeting or DVC should take place before the end of June. In the meantime, Embassy Ottawa will continue to meet with industry representatives to detail their concerns for discussion by any eventual working group.

[¶](#)4. (SBU) IPR Enforcement: Training and Technical Consultations: We have also solicited names of Canadian officials who would be interested in attending USPTO enforcement training (ref SECSTATE 94876), and we will submit Embassy and Consulates' nominees in the next two weeks. Initial responses from Canadian federal officials have been very positive, and we hope that this training will provide a

good opportunity for networking between enforcement agents on both sides of the border. We understand that DHS is willing to host a visit of Canadian officials to the DHS IPR enforcement center (or a video conference). There are also a number of bilateral fora which can be used during the course of the year to address IPR enforcement, including the Cross Border Crime Forum (October 2005) and high-level meetings.

15. (SBU) WIPO Ratification/Copyright Act amendments: We expect the GOC to table legislation amending the Copyright Act to implement WIPO obligations within the next week. If we want to make the case for stronger rules in areas such as Internet Service Provider liability, we need to have a quick and concise USG reaction to that draft to use in discussion with stakeholders, legislators, GOC agencies and the press. Although the passage of the copyright act amendments is a key goal under the 2005 Special 301 report, it seems unlikely that legislation will pass before the end of 2005. However, USG should continue to encourage expeditious legislation, since the recent appeals court decision emphasizes that the question of legality of peer-to-peer filesharing has not been answered and Canadian rights-holders currently have no recourse such as "notice and takedown" (ref Ottawa 1571).

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